

United States Court of Appeals
for the Fifth Circuit

No. 22-30812
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 11, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL SHORT,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:96-CR-232-1

Before JONES, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Michael Short, federal prisoner # 22355-034, appeals the denial of his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2) and sections 401 and 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5220, 5222 (2018) (FSA). We review for an abuse of discretion.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-30812

See United States v. Lopez, 989 F.3d 327, 332 (5th Cir. 2021); *United States v. Batiste*, 980 F.3d 466, 469 (5th Cir. 2020).

As he does not address the denial of § 3582(c)(2) relief based upon Amendment 599 to the Sentencing Guidelines, Short has abandoned any challenge to that denial. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993). The district court properly denied § 3582(c)(2) relief under Amendment 782 to the Sentencing Guidelines because Short’s base offense level was derived from the U.S.S.G. § 2K2.1(c)(1)(B) cross-referenced to U.S.S.G. § 2A1.1(a), not U.S.S.G. § 2D1.1(c), such that his guidelines range was not lowered by Amendment 782. *See United States v. Morgan*, 866 F.3d 674, 675–77 (5th Cir. 2017). Although Short argues that the district court misapplied the sentencing guidelines, miscalculated his guidelines range, and failed to explain its reasons for applying § 2A1.1, such arguments relating to his original sentencing are not cognizable in a § 3582(c)(2) motion. *See United States v. Evans*, 587 F.3d 667, 674 (5th Cir. 2009).

Section 401 of the FSA does not apply retroactively to Short’s case since he was sentenced prior to its enactment. *See United States v. McClaren*, 13 F.4th 386, 417 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 1244 (2022). Further, none of the offenses for which he sought a sentence reduction under FSA § 404 constitutes a “covered offense” such that FSA § 404 affords him no grounds for relief. *See United States v. Jackson*, 945 F.3d 315, 319–20 (5th Cir. 2019).

AFFIRMED.